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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/702,540 Confirmation No. 8250
Applicant : Vincent So
Filed : November 7, 2003
TC/A.U. : 3621
Examiner : Charles C. Agwumezie

Docket No. : 79865-5
Customer No. : 07380

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Commissioner for Patents
Alexandria, VA 22313-1450
U.S.A.

Dear Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant requests review of the rejections set out in the Final Office Action dated June 22, 2009 in connection with the above-identified application. A Notice of Appeal has been submitted concurrently herewith.

In the Final Action dated June 22, 2009 the Examiner rejects claims 16 and 34 under 35 U.S.C. 112, second paragraph on the grounds that "it would be unclear to one of ordinary skill in the art to understand which of the preceding blocks or sections of the plurality of the encrypted blocks or sections that will be completed before the next keys is received" (Office Action paragraph 12; emphasis added). The Examiner seems to have interpreted claims 16 and 34 to recite that a decryption key for a next encrypted section is only received after decryption of a preceding encrypted section is completed. This is entirely contrary to the actual recited subject matter of the claims. For example, independent claim 16 clearly recites in part "for each encrypted section: receiving a respective decryption key in respect of the encrypted section before playback of a preceding encrypted section of the plurality of encrypted sections is complete;" (emphasis added).

Furthermore, Applicant respectfully submits that when the claim is read as a whole a person of ordinary skill in the art would readily understand that the claim encompasses receiving (claims 16) and transmitting (claim 34) decryption keys for a next encrypted section before playback of any one of the preceding encrypted sections is completed to facilitate contiguous playback of the encrypted video content. In some embodiments this may be an immediately preceding encrypted section, such that a decryption key in respect of a next encrypted section of encrypted video content is delivered before playback of the encrypted section that immediately precedes the next encrypted section is completed. In other embodiments, the decryption key in respect of the next encrypted section is delivered before playback of an earlier encrypted section (prior to the immediately preceding encrypted section) is completed. Also, when the claim is read as a whole a person of ordinary skill in the art would readily understand that the destruction of decryption keys at the customer processing platform, as recited in the claims, is carried out such that at any time the customer processing platform has simultaneous possession of at most a subset of the decryption keys corresponding to the plurality of encrypted sections of video data content. Accordingly, the rejection of claims 16 and 34 under 35 U.S.C. 112, second paragraph should be withdrawn.

In paragraph 15 of the Office Action dated June 22, 2009 the Examiner maintains the rejection of claim 16 under 35 U.S.C. 103(a) as being unpatentable over Feig (US 7,251,833) in view of Giroux (US 2002/0078361).

The present invention is directed to controlling contiguous decryption and playback of encrypted video data content at a customer processing platform, which involves streaming decryption keys to the customer processing platform in a manner that facilitates contiguous playback of the encrypted video data content and deleting the decryption keys in a manner such that at any time the customer processing platform has simultaneous possession of at most a subset of the plurality of decryption keys necessary to decrypt the encrypted video data content. It must be appreciated that there are three inter-related procedures that are involved in claimed invention: reception of a decryption key, decryption of an encrypted section of video data content corresponding to the decryption key, and the destruction of the decryption key, with the three procedures carried out in the claimed manner to allow contiguous playback of the encrypted video data content and to prevent the customer processing platform from having simultaneous possession of all of the decryption keys for decrypting the video data content. None of the three references cited by the Examiner contemplates this type of operation and Applicant respectfully submits that

the Examiner's suggested combination of the cited references is based solely on a reading of the references with hindsight analysis of the instant application as a template.

The Examiner has acknowledged that Feig is entirely silent with respect to the destruction of decryption keys. As such, all of the teachings of Feig result in a customer receiving and maintaining a complete set of decryption keys for a given piece of encrypted content. In Applicant's response filed February 13, 2009, Applicant argued that Feig et al. fails to teach or even suggest "for each encrypted section: receiving a respective decryption key in respect of the encrypted section before playback of a preceding encrypted section of the plurality of encrypted sections is complete", as recited in claim 16. In response to Applicant's arguments, the Examiner points to the embodiment described in Feig in which "the server 100 would transmit all of the token keys in a token key block, wherein each respective token key can be retrieved from the token key block at the client receiver 200 in a sequence ordered by the order of occurrence of playback of each corresponding one of the partitioned multimedia file 102" (See paragraph 3 of the final rejection; emphasis added). Applicant respectfully submits that it is important to realize that the embodiment of Feig to which the Examiner is referring obviously includes the delivery of all of the token keys necessary to decrypt a multimedia file to a client receiver 200, so that the client receiver 200 has simultaneous possession of all of the token keys necessary to decrypt the multimedia file, which is entirely contrary to the claimed invention.

The Examiner has relied on Giroux for allegedly teaching the destruction of decryption keys. However, as noted in Applicant's response of April 7, 2008, Giroux et al. fails to teach or even suggest the destruction of decryption keys in accordance with Applicant's claims. Specifically, Giroux et al. requires that before a decryption key for a next encrypted section of data content is requested by a customer, the decryption key for a current encrypted section must be destroyed and the decrypted data content for the current section must be deleted. Giroux et al. is intended for data contents which are not time sensitive, such as written documents. Although Giroux does briefly mention that the techniques described therein could be used for music and video applications, Giroux provides absolutely no teaching of how the delivery, use and deletion of decryption keys would be handled in such applications. Given the fact that all of the substantive teachings of Giroux relate to the encryption of discrete chapters of a non-time-sensitive document with respective encryption keys, Applicant respectfully submits that one skilled in the art would understand that the references to "music" and "video" applications in Giroux pertain to applications in which

independent and non-contiguous pieces of music and video content are encrypted with respective encryption keys and their individual and non-contiguous playback is controlled by the decryption key access procedure described in Giroux. For example, one skilled in the art would understand that the reference to “music” applications in Giroux pertains to the encryption of each individual song of a record with a respective encryption key, such that non-contiguous playback of the individual songs is governed by the decryption key access procedure described in Giroux. Similarly, encryption and decryption of a sequence of non-contiguous video files with respective encryption/decryption keys may be contemplated by Giroux, but certainly not that of contiguous video data, as none of the teachings of Giroux are capable of supporting such operation. It should be clear that Giroux et al. is not in any way directed to providing seamless playback of sequential contiguous sections of encrypted video data content, rather Giroux et al. is directed to controlling access to discrete sections of data content in a non-time-sensitive manner.

It should be appreciated that the teachings of Feig to which the Examiner points in support of the rejection of claims 16 and 34, in so far as those teachings refer to the delivery of an entire set of token keys to a client receiver, are entirely incompatible with the teachings of Giroux, in so far as the teachings of Giroux are directed to the delivery of a decryption key for a different piece of encrypted data content only after a previously used key is destroyed and the data decrypted with the previously used key has been deleted from memory.

Furthermore, Applicant submits that in light of the foregoing incompatibility of the cited references the Examiner’s attempts to combine these references to arrive at the present invention is obviously an attempt to reconstruct the claimed invention using the instant application as a template. The Examiner totally ignores this incompatibility, despite the fact that the teachings of Feig that the Examiner has pointed to in paragraph 3 of the final rejection for allegedly teaching “for each encrypted section: receiving a respective decryption key in respect of the encrypted section before playback of a preceding encrypted section of the plurality of encrypted sections is complete”, as recited in claim 16, requires advance delivery of all of the decryption keys to the client receiver.

In the response filed February 13, 2009, Applicant argued that Giroux fails to teach or even suggest “destroying the respective decryption key only after at least a respective decryption key in respect of a next encrypted section has been received”, as recited in claim 16. In response to Applicant’s argument, in paragraph 4 of the final rejection the Examiner states that Applicant’s argument is “against the references individually” and cautions that “one cannot show

nonobviousness by attacking references individually where the rejections are based on combinations of references". However, the Examiner has explicitly

acknowledged that Feig is silent with respect to the destruction of decryption keys, and relies solely on Giroux for this feature. Accordingly, Applicant's assertions regarding the deficiencies in the teachings of Giroux is appropriate.

Applicant respectfully submits that no combination of the cited portions of Feig and Giroux can be found to render claim 16 obvious, as the cited portions of Feig that the Examiner relies on for providing contiguous playback of the encrypted sections of video content teaches that all of the decryption keys must be sent to the customer receiver so that the customer receiver has simultaneous possession of all of the decryption keys, and the cited portions of Giroux that the Examiner relies on for providing destruction of decryption keys precludes contiguous playback, since it requires the destruction of a previous decryption key and the deletion of decrypted content from memory prior to delivery of a decryption key in respect of a different portion of encrypted data content.

Independent claim 34 has been rejected under 35 U.S.C. 103(a) based on Peterka (US 2002/0170053) in view of Feig and Giroux. Applicant notes that Peterka fails to overcome any of the deficiencies of Feig and Giroux. Applicant respectfully submits that the foregoing comments with respect to the novelty and nonobviousness of claim 16 over Feig and Giroux are equally applicable to claim 34, and therefore no combination of Peterka, Feig and Giroux can be found to render claim 34 obvious.

Applicant respectfully requests that the rejection of claims 16 and 34, and the dependent claims which depend therefrom, under 35 U.S.C. 103(a) be reconsidered and withdrawn in view of the foregoing.

Respectfully submitted,
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RAB:JFS:gcs